

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 40

AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-48.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 48.3. "Grandparent visitation", for purposes of IC 31-17-2.2, means visitation rights granted to a grandparent under IC 31-17-5.**

SECTION 2. IC 31-9-2-84.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 84.6. "Nonrelocating individual", for purposes of IC 31-14-13 and IC 31-17-2.2, means an individual who has, or has filed an action seeking:**

- (1) custody of the child;**
- (2) parenting time with the child; or**
- (3) visitation with the child under IC 31-17-5.**

SECTION 3. IC 31-9-2-84.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 84.7. "Nonrelocating parent", for purposes of IC 31-17-2.2, means a parent of a child who has or is seeking:**

- (1) custody of the child; or**
 - (2) parenting time with the child;**
- and does not intend to move the individual's principal residence.**

SECTION 4. IC 31-9-2-107.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2006]: **Sec. 107.5. "Relocating individual", for purposes of IC 31-17-2.2, means an individual who has or is seeking:**

- (1) custody of a child; or**
- (2) parenting time with a child;**

and intends to move the individual's principal residence. The term does not include an individual granted visitation rights under IC 31-17-5.

SECTION 5. IC 31-9-2-107.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 107.7. "Relocation", for purposes of IC 31-17-2.2, means a change in the primary residence of an individual for a period of at least sixty (60) days.**

SECTION 6. IC 31-14-13-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10. If an individual who has been awarded custody of or parenting time with a child under this chapter this article (or IC 31-6-6.1-11 before its repeal) intends to move to a the individual's residence, other than a residence specified in the custody order that is outside Indiana or at least one hundred (100) miles from the individual's county of residence, the individual must:**

- (1) file a notice of that intent with the clerk of the court that issued the custody or parenting time order; and**
- (2) send a copy of the notice to each noncustodial parent nonrelocating individual in accordance with IC 31-17-2.2.**

SECTION 7. IC 31-17-2.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 2.2. Relocation

Sec. 1. (a) A relocating individual must file a notice of the intent to move with the clerk of the court that:

- (1) issued the custody order or parenting time order; or**
- (2) if subdivision (1) does not apply, has jurisdiction over the legal proceedings concerning the custody of or parenting time with a child;**

and send a copy of the notice to any nonrelocating individual.

(b) Upon motion of a party, the court shall set the matter for a hearing to review and modify, if appropriate, a custody order, parenting time order, grandparent visitation order, or child support order. The court shall take into account the following in determining whether to modify a custody order, parenting time order, grandparent visitation order, or child support order:

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- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation.
- (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties.
- (4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child.
- (5) The reasons provided by the:
 - (A) relocating individual for seeking relocation; and
 - (B) nonrelocating parent for opposing the relocation of the child.
- (6) Other factors affecting the best interest of the child.

(c) The court may award reasonable attorney's fees for a motion filed under this section in accordance with IC 31-15-10.

Sec. 2. (a) If a party provides notice of relocation at an initial hearing to determine custody, the court may consider the factors set forth in this chapter in the court's initial custody determination.

(b) The court may consider a proposed relocation of a child as a factor in determining whether to modify a custody order, parenting time order, grandparent visitation order, or child support order.

Sec. 3. (a) Except as provided in section 4 of this chapter, an individual required to file a notice under IC 31-14-13-10 or section 1 of this chapter must:

- (1) send the notice to the nonrelocating individuals:
 - (A) by registered or certified mail; and
 - (B) not later than ninety (90) days before the date that the relocating individual intends to move; and
- (2) provide the following information in the notice:
 - (A) The intended new residence, including the:
 - (i) address; and
 - (ii) mailing address of the relocating individual, if the mailing address is different than the address under item (i).
 - (B) The home telephone number of the new residence.
 - (C) Any other applicable telephone number for the

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relocating individual.

(D) The date that the relocating individual intends to move.

(E) A brief statement of the specific reasons for the proposed relocation of the child.

(F) A proposal for a revised schedule of parenting time or grandparent visitation with the child.

(G) A statement that a parent must file an objection to the relocation of the child with the court not later than sixty (60) days after receipt of the notice.

(H) A statement that a nonrelocating individual may file a petition to modify a custody order, parenting time order, grandparent visitation order, or child support order.

(b) Except as provided in section 4 of this chapter, if the relocating individual is unable to provide the information required under subsection (a)(2) not later than ninety (90) days before the relocating individual intends to move, the relocating individual shall provide the information in the manner required under subsection (a) not later than ten (10) days after the date that the relocating individual obtains the information required to be provided under subsection (a)(2). However, the relocating individual must provide all the information required under subsection (a)(2) not later than thirty (30) days before the relocating individual intends to move to the new residence.

Sec. 4. If a court finds that disclosure of the information required under section 3 of this chapter creates a significant risk of substantial harm to the relocating individual or the child, the court may order:

- (1) that the address, the telephone number, or other identifying information of the relocating individual or child not be disclosed in the pleadings, other documents filed in the proceeding, or the final order;
- (2) that the information required under section 3 of this chapter be maintained by the clerk of the court in a secure location separate from the pending case file;
- (3) that the notice requirements under IC 31-14-13-10 or this chapter be waived to the extent necessary to protect the relocating individual or child from significant risk of substantial harm; or
- (4) other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

Sec. 5. (a) Not later than sixty (60) days after receipt of the

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notice from the relocating individual under IC 31-14-13-10 or this chapter, a nonrelocating parent may file a motion seeking a temporary or permanent order to prevent the relocation of a child.

(b) On the request of either party, the court shall hold a full evidentiary hearing to grant or deny a relocation motion under subsection (a).

(c) The relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason.

(d) If the relocating individual meets the burden of proof under subsection (c), the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child.

(e) If the nonrelocating parent fails to file a motion under subsection (a), the relocating individual who has custody of the child may relocate to the new residence.

Sec. 6. (a) If a nonrelocating parent files a motion under section 5 of this chapter, the court, after notice and an opportunity to be heard or after compliance with Trial Rule 65(B), may grant a temporary order restraining the relocation of a child or order the child to be returned to the nonrelocating parent if the court finds:

- (1) that the notice required under IC 31-14-13-10 or this chapter was not served in a timely manner and the parties have not presented an agreement concerning a parenting time schedule;
- (2) that the child has been relocated without:
 - (A) the appropriate notice;
 - (B) an agreement between the parties; or
 - (C) a court order; or
- (3) from an examination of the evidence presented at the temporary hearing, that there is a likelihood that, after a final hearing, the court will not approve the relocation of the child.

(b) The court may grant a temporary order permitting the relocation of the child pending a final hearing if the court:

- (1) determines that the notice required under IC 31-14-13-10 or this chapter was provided in a timely manner;
- (2) issues an order for a revised schedule for temporary parenting time with the child; and
- (3) reviews the evidence presented at the temporary hearing and determines that there is a likelihood that, after the final hearing, the court will approve the relocation of the child.

(c) If the court issues a temporary order authorizing the

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relocating individual to move, in its final judgment, the court must consider factors:

(1) other than; or

(2) in addition to;

the temporary relocation of the child when issuing a final order.

SECTION 8. IC 31-17-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. A grandparent seeking visitation rights shall file a petition requesting reasonable visitation rights:

(1) in a ~~circuit or superior~~ circuit, superior or probate court of the county in which the child resides in a case described in section 1(a)(1), 1(a)(3), or 10 of this chapter; or

(2) in the court having jurisdiction over the dissolution of the parents' marriage in a case described in section 1(a)(2) of this chapter.

SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2006]: IC 31-17-2-4; IC 31-17-2-23.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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